

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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JAMES MCDONALD, )  
                    )  
Plaintiff,       ) CASE NO. C10-1952RSL  
                    )  
v.                ) SEATTLE, WASHINGTON  
                    ) January 31, 2013  
ONEWEST BANK, FSB; NORTHWEST )  
TRUSTEE SERVICES, INC.;     ) EVIDENTIARY HEARING  
MORTGAGE ELECTRONIC     )  
REGISTRATION SYSTEMS, INC.; )  
INDYMAC BANK FSB; DOES 1-50, )  
                    )  
Defendants.       )  
                    )

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VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE ROBERT S. LASNIK  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

For the Plaintiff:     HA THU DAO

For the Defendants:    JULIE R. VACURA  
                          HEIDI BUCK MORRISON  
                          CHARLES ELLIOT KATZ  
                          JOSEPH D. MUELLER

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1 JANUARY 31, 2013

9:00 A.M.

2 PROCEEDINGS

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3 THE CLERK: C10-1952L, James McDonald v. OneWest  
4 Bank, et al.

5 Counsel, please make your appearances for the record.

6 MS. DAO: Ha Dao on behalf of James McDonald, who is  
7 present with me, Your Honor.8 MR. KATZ: Charles Katz, co-counsel for Northwest  
9 Trustee Services.10 MS. BUCK MORRISON: Heidi Buck Morrison for OneWest  
11 Bank and Northwest Trustee Services.12 MR. MUELLER: Joseph Mueller, counsel for OneWest and  
13 MERS.14 MS. VACURA: Julie Vacura, Your Honor, counsel for  
15 OneWest Bank and MERS, and we have Mr. Boyle with us from  
16 OneWest Bank.17 THE COURT: Thank you. So what I want to do is take  
18 the testimony, and let's get right to it, and then I know  
19 there are some issues about protective orders and timing and  
20 things like that. But we have people who I want to hear from  
21 that we're going to do first and foremost, and, certainly  
22 Mr. Boyle, and then on the phone we have Mr. Corcoran, and  
23 I'm not sure where we go from there. There were a couple who  
24 may testify as witnesses. I don't want to have Ms. Morrison  
25 testify as a witness. She's an officer of the court, and she

1 can make representations to me. But Mr. Boyle and  
2 Mr. Corcoran are the main people. And then I don't know if  
3 there is a need to hear from the other OneWest Bank  
4 employees. We'll worry about that later.

5 So which -- are we going to do Mr. Boyle first?

6 MS. VACURA: Yes, Your Honor.

7 THE COURT: Okay. And that's your witness?

8 MS. VACURA: Yes, it is, Your Honor.

9 THE COURT: Great. All right. You can call Mr.  
10 Boyle to the witness stand, and we'll swear him in.

11 Mr. Boyle, if you'll come forward, my clerk will  
12 administer the oath to you.

13 CHARLES BOYLE, HAVING BEEN FIRST DULY SWORN,  
14 TESTIFIED AS FOLLOWS:

15 THE CLERK: Please state your full name for the  
16 record, and spell your last name for the court reporter.

17 THE WITNESS: Charles John Boyle, B-o-y-l-e.

18 THE COURT: You may inquire.

19 MS. VACURA: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. VACURA:

22 Q Mr. Boyle, will you please tell the court what you do for  
23 a living?

24 A Yes. I'm a vice president of our default risk management  
25 and litigation department for OneWest Bank.

1 Q And what does that job entail?

2 A As part of my duties, I manage a team of litigation  
3 specialists, managers, supervisors, team leads, as well as  
4 manage litigation, help with litigation strategies, obviously  
5 signing documents, reviewing documents and files in general.

6 Q How long have you been with OneWest?

7 A I've been with OneWest since its inception, March 19th,  
8 2009.

9 Q What did you do prior to your time at OneWest?

10 A Prior to OneWest, I worked with IndyMac Federal Bank from  
11 July 11th of 2008 through March of 2009. Prior to that I  
12 worked with IndyMac, Inc. from July of 2001 through the  
13 takeover by the FDIC.

14 Q Could you please quickly tell the court, not in any great  
15 detail, what your jobs were when you were at IndyMac Bank and  
16 its predecessor?

17 A When I was with IndyMac Bank, I first began as a temporary  
18 financing clerk for a couple of months, and then I became a  
19 full-time employee in the bankruptcy department. I worked as  
20 a bankruptcy specialist for a few years, and then I was  
21 promoted to a special assets specialist and analyst dealing  
22 with a lot of the bankruptcy adversary matters, and  
23 bankruptcy cash issues.

24 I then was moved over to the contested foreclosure title  
25 resolution and special assets group. I then became a

1 supervisor of that group and assumed other duties such as  
2 foreclosure referral review, as well as --

3 Q What is that?

4 A That was reviewing files that were to be referred to  
5 foreclosure to ensure that they were properly being referred  
6 by our vendor.

7 I would then -- I was then transferred to Austin, Texas --  
8 this was in Pasadena, California. I was transferred to  
9 Austin, Texas, in 2007, and became a manager of the default  
10 risk management litigation group, and then was the manager up  
11 until July of 2008.

12 Q And that's when -- what happened in July of 2008?

13 A In July of 2008, I was in the OTS, in the FDIC's IndyMac  
14 bank, and created IndyMac Federal Bank.

15 Q All right. And so did your job duties remain essentially  
16 the same through the transition of the takeover and then the  
17 sale of IndyMac Bank?

18 A The sale of IndyMac Federal Bank?

19 Q Yes.

20 A Essentially -- I mean, there was different, you know,  
21 reporting requirements for the FDIC and stuff, but generally  
22 it was pretty much the same.

23 Q Tell the court, please, in terms of your servicing  
24 systems, your servicing platform, did much of that change  
25 between IndyMac Bank, IndyMac Federal Bank, and OneWest Bank?

1 A Many of the services platforms were, you know, I think  
2 maintained to allow for further continuity of the servicing  
3 of the loans. Obviously, the names were changed within the  
4 applications. You know, significant upgrades were made, but  
5 pretty much -- the standard platforms pretty much remained  
6 the same.

7 Q And are you familiar with the various applications and  
8 servicing reports that come from those applications?

9 A Yes.

10 Q And how is it that you're familiar with them?

11 A Just in my everyday course of business, you know, I have  
12 to review -- when I'm reviewing documents, or if I'm  
13 reviewing a file, I will have to look at the servicing  
14 applications to ensure -- you know, to do research, to verify  
15 facts and verify statements.

16 Q What are the databases or platforms that you access most  
17 often in order to do your job?

18 A There are several, but mainly I accessed our MSP,  
19 which is --

20 Q What does that mean?

21 A I believe it stands for Mortgage Servicing Platform. It  
22 is basically our main system of record where we record many  
23 of our servicing activities.

24 I also occasionally will use Web Extender, which is our  
25 images repository. I also use our litigation database quite

1 often, as well as, you know, emails, and in certain cases, I  
2 will have to go into other applications, like AllRegs, which  
3 is the application I'll go to look at GSE standard servicing  
4 issues -- or servicing guidelines.

5 Q What is GSE?

6 A Oh, sorry. Government Sponsored Entity.

7 Q Do you have on your system agreements with, for example,  
8 Freddie Mac for servicing loans?

9 A Well, I can access those through the Internet very easily.

10 Q And so are most of the agreements that one -- if not all  
11 of the agreements with Freddie Mac at OneWest Bank -- needs  
12 to refer to on the Internet?

13 A Yes, most of the servicing are on AllRegs.

14 Q Can you give the court a feel for how many pages might be  
15 encompassed in those servicing guidelines?

16 A I'd hate to venture a guess, but I would say several  
17 hundreds.

18 Q All right. Do you refer to them?

19 A Yeah, often.

20 Q Are there other kinds of guidelines or agreements online  
21 that you, in your job, access?

22 A Yeah. We have the master purchase agreement, the loan  
23 sale agreement, the servicing business asset purchasing  
24 agreement. Those are the documents that were really the main  
25 documents that effectuated the sale of OneWest -- of the

1 assets held by the FDIC that were sold to OneWest Bank.

2 Q All right. And just, generally, if you could tell the  
3 court, were the servicing rights that IndyMac Bank had sold  
4 the OneWest Bank?

5 A Generally, yes, there were assets.

6 Q Were there other -- were there actual loans sold to  
7 OneWest Bank by the FDIC from IndyMac?

8 A Yes.

9 Q All right. So does OneWest Bank both own some loans and  
10 service other loans?

11 A Yes.

12 Q You, in this case, Mr. Boyle, that you're here to testify  
13 about today, signed some declarations, correct?

14 A Correct.

15 Q Do you have in front of you a binder that says at the  
16 front, "Declarations of Charles Boyle"?

17 A I do.

18 MS. VACURA: Your Honor, I'm going to refer to docket  
19 numbers, and I can either provide a notebook similar to what  
20 Mr. Boyle has --

21 THE COURT: I'll take the notebook. Thank you.

22 MS. VACURA: All right.

23 Q (By Ms. Vacura) In your binder, it's tabbed, and there's  
24 a document at the top. It says, "Document No. 49-3," and it  
25 is at Tab No. 2. If you could refer to that, please.

1 A Okay.

2 Q All right. Do you know, Mr. Boyle, the term "30(b)(6)  
3 witness"?

4 A Yes, I do.

5 Q How do you know that term?

6 A I've been designated as a 30(b)(6) witness in other cases.  
7 Generally, I understand it to mean that I am the person most  
8 knowledgeable about the case.

9 Q So can you give the court more detail about what your  
10 understanding is when you are acting -- what it means to act  
11 as a 30(b)(6) witness for your business, OneWest Bank?

12 A Basically, I'm going to be the one that will verify  
13 certain information, will be the person to, you know, review  
14 the file and make sure that I understand everything that's  
15 going on in it, and to verify facts and statements.

16 Q Do you know everything about everything at OneWest Bank?

17 A I would like to think that I did, but I don't.

18 Q All right. Do you, in signing -- and now I want to talk  
19 just generally about a declaration that you might sign on  
20 behalf of OneWest Bank as a 30(b)(6) witness.

21 Generally, when you are asked to sign a declaration,  
22 do you find you ever have to go elsewhere to verify  
23 information in declarations?

24 A Yes.

25 Q And do you find sometimes that you need to actually get

1                   educated about some aspect of the business from someone else?

2       A    Yes.

3       Q    And do you do that when you need to sign a declaration  
4                   that has a statement in it that you're not really sure is  
5                   accurate?

6       A    Yes, I do.

7       Q    All right. You have in this declaration, at page 2, a  
8                   statement that says that, "Mr. McDonald, in order to secure  
9                   repayment" -- this is paragraph 2 -- "in order to secure  
10                  repayment of the promissory note in the amount of \$389,481.60  
11                  executed a deed of trust," and you say that true and correct  
12                  copies are attached.

13                  How do you know that the deed of trust that's attached  
14                  is a true and correct copy of Mr. McDonald's deed of trust?

15       A    Well, when I'm reviewing the declaration, I will ensure  
16                  that, you know, this is -- I know because this is a business  
17                  record that we keep in our normal course of everyday  
18                  activities.

19                  I will actually go and look at the deed of trust and the  
20                  note. I'll verify that, you know, the dates are correct, the  
21                  names are correct. If there's recording information, I'll  
22                  verify that.

23       Q    And, Mr. Boyle, do you recall, as you're sitting here  
24                  today, what bank database you would go to to find this deed  
25                  of trust?

1 A There would be several places I could find this  
2 information. In this specific case, I don't know where  
3 exactly. It could be located in my litigation file. Often  
4 they're located in our imaging system, Web Extender. I could  
5 also contact -- you know, look at county information if I  
6 need to, or contact our custodian.

7 Q Do you know who is your custodian for this particular  
8 loan?

9 A I believe it's Deutsche National Bank.

10 Q You also say in this declaration that, "After origination,  
11 IndyMac Bank sold plaintiff's note to Freddie Mac," and that  
12 "IndyMac Bank retained the servicing rights and serviced the  
13 loan on behalf of Freddie Mac." You also say, "Freddie Mac  
14 remains the investor and owner of the note." How did you  
15 know all that?

16 A Well, again, there's several places I could look in the  
17 servicing system. You know, I believe the -- if I can just  
18 look at the deed of trust.

19 MS. VACURA: May the witness have A-15? It's a  
20 separate binder.

21 THE WITNESS: Thank you.

22 A As to origination, I believe the deed of trust would have  
23 said that IndyMac originated it. I'd have to look at it.

24 Q (By Ms. Vacura) Please take a look at Tab 2 in A-15.

25 MS. DAO: Your Honor, we would object to this

1           particular document that counsel is referring to, because it  
2           was not ever disclosed to us until very late.

3           THE COURT: I understand your objection. For  
4           purposes of the evidentiary hearing, I'm going to allow it.

5           MS. VACURA: Your Honor, I'd like to clarify that  
6           this document was actually produced to Mr. McDonald on  
7           June 27, 2011. There is an email at the front of Tab 2 that  
8           shows this document was transferred to Mr. McDonald on that  
9           date.

10          Q        (By Ms. Vacura) Mr. Boyle, could you explain to the court  
11           what this document is?

12          A        Yes. This is a screenshot -- the first page is the  
13           screenshot of the MSP system that I discussed earlier. It's  
14           the DLQ1 screen, and it has various information about the  
15           loan.

16          Q        What does DLQ1 mean?

17          A        I believe it's just the delinquent -- it's a Delinquent 1  
18           screen.

19          Q        Meaning that this loan is delinquent?

20          A        Correct.

21          Q        All right.

22           Now, at the bottom of this, it says, Investor header  
23           info." Do you see that?

24          A        Yes, I do.

25          Q        Tell the court what that means.

1 A That just identifies to me who the investor of the loan  
2 is.

3 Q And it has who as the investor?

4 A Federal Home Loan Mortgage Company, often referred to as  
5 Freddie Mac.

6 Q And it says, "Sale date: 2/07." What does that mean?

7 A To me that indicates that in February of 2007, that is  
8 when the loan was sold to Freddie Mac.

9 Q And it has below that, "Loan date." What does that mean?

10 A Generally, that's the date the loan was originated.

11 Q All right. Now, how do you know that -- by looking at  
12 this or otherwise, how do you know that it was IndyMac that  
13 sold this loan to Freddie Mac in February of 2007?

14 A You know, obviously, I could also look at what we call the  
15 MERS milestones, which would let me know what were the  
16 different transfers and sale of the asset, including  
17 beneficial rights as well as servicing rights.

18 Q And if you could please go to the fourth-to-the-last page  
19 of this Tab 2. It says, "Milestones." Do you see that?

20 A Yes, I do.

21 Q Is this the document that you were just referring to?

22 A Yes.

23 Q And where does this document come from?

24 A This can be obtained from the MERS -- I believe from the  
25 MERS website.

1 Q And how do you gain access to the MERS website?

2 A You have to have a login and a password.

3 Q All right. Does OneWest have a login and password?

4 A Yes.

5 Q All right. Tell the court what this document reflects  
6 about Mr. McDonald's loan.

7 A Well, at the -- the way you read it, it's the most current  
8 activity is listed at the top.

9 Q Let's go to the bottom.

10 A At the bottom of the sheet, it states that it was  
11 registered with MERS, the servicer at the time. Now, it says  
12 FDIC is receiver for IndyMac Federal Bank, and the reason it  
13 states that is because the FDIC just assumes IndyMac Bank's  
14 registration number, and when they went and updated the  
15 system, it updated every IndyMac Bank entry with the FDIC  
16 IndyMac Federal Bank.

17 Q All right.

18 A But that's when -- to me it would be the date of -- around  
19 the origination date.

20 Q The origination date of what?

21 A Of the loan.

22 Q All right.

23 A The second line would indicate --

24 Q I'm sorry. Back up.

25 A Sorry.

1 Q Let me get you over to the last column, and it says, "MIN  
2 status: Active," "Servicer: FDIC as receiver for IndyMac."  
3 What does that mean?

4 A That means IndyMac Bank was the servicer.

5 Q In January --

6 A Of --

7 Q January of 2007?

8 A Correct.

9 Q All right. Go ahead and tell the court what the next  
10 entry up means.

11 A The next entry identifies, basically, the sale of the  
12 asset to Freddie Mac Bank. It's -- the description is  
13 entitled, "Transfer of beneficial rights Option 1," and as  
14 you'll see, it says, "New Investor" -- in the far-hand  
15 column, "New investor, Federal Home Loan Mortgage  
16 Corporation." Old investor, FDIC is receiver for IndyMac  
17 Federal Bank, and then it has the transfer date of February  
18 of 2007.

19 Q Do you know, does OneWest Bank have an original or even a  
20 copy of a document wherein IndyMac says, Freddie Mac, I'm  
21 selling you Mr. McDonald's loan?

22 A I don't believe so. I believe all those documents are in  
23 the possession of the FDIC.

24 Q Has OneWest done a search of its own records to determine  
25 whether it's in its own records?

1 A Yes, I believe we have.

2 Q Now, if you look up at the next entry of which is dated  
3 March 29, 2009, can you tell the court what this entry is  
4 telling us?

5 A This entry is telling us that the servicing rights have  
6 been transferred and were sold to OneWest Bank from the FDIC.

7 Q And is that information contained in the third column?

8 A Yes, that's correct.

9 Q All right. And it says, "New servicer, OneWest Bank,"  
10 right?

11 A Correct.

12 Q Okay.

13 The next entry is dated January 27, 2010. Can you tell  
14 the bank (sic) what that says?

15 A Generally, it says it's a foreclosure status update, and  
16 it just states that the foreclosure is pending.

17 Q Of Mr. McDonald's property?

18 A Yes, this would be...

19 Q All right. Let me have you go back to the DLQ1, which is  
20 the document we were looking at initially, which is the  
21 second page of Tab 2.

22 A Okay.

23 Q Are you there?

24 A Yes.

25 Q Tell the court how this information that is at the bottom

1       that says "Investor header info," tell the court how this  
2       information gets entered into the DLQ1, if you know.

3       A     The DLQ1 is a screenshot, so when you go to -- the DLQ1  
4       screen is a general screen. You see there is a line right  
5       next to the loan number. In that line you would put in INVE,  
6       and that will show you each investor header information.

7       Q     Do you know how that information gets populated into the  
8       DLQ1, if you know?

9       A     No.

10      Q     Does it come from another database?

11      A     I believe so. I'm not...

12      Q     Let me ask you this: Do you find in conducting your  
13       business and doing your job on behalf of OneWest Bank that  
14       the information that you find in the DLQ1 is generally  
15       reliable?

16      A     Yes.

17      Q     And I want to ask you that same question about the MERS  
18       milestone. Do you use the MERS milestone to gather  
19       information about the various cases?

20      A     Yes.

21      Q     And do you find, in your experience doing the work that  
22       you do for OneWest Bank, that the MERS milestone information  
23       is generally reliable?

24      A     Yes.

25      Q     I'd like to take you back to your declaration. Paragraph

1       4 of your declaration, it says IndyMac Bank was closed by the  
2       Office of Thrift Supervision in July of 2008, and the FDIC  
3       was appointed receiver, and you attached a true and correct  
4       copy of the order.

5             How do you know that IndyMac Bank was closed and the  
6       FDIC was appointed receiver?

7       A     The order -- I would have looked at the order that was  
8       attached, but I was actually present during the seizure, so.

9       Q     Were you physically present in the office?

10      A     I was physically present in one of IndyMac Bank's offices,  
11       yes.

12      Q     And you understood what was going on when the Office of  
13       Thrift Supervision took over?

14      A     Yes.

15      Q     Your next paragraph is that IndyMac Bank was created --  
16       or -- yes, IndyMac Federal Bank was created by the FDIC, and  
17       the FDIC was appointed conservator. How do you know that?

18      A     Again, I was there at this time. We were told, you know,  
19       the FDIC was going to come in. They were going to be the  
20       new, basically, management -- management entity, and that we  
21       were all now employees of IndyMac Federal Bank.

22      Q     Okay. If you would look at your declaration. There's  
23       three footnotes at the bottom, and these footnotes are  
24       directing the reader of your declaration to websites.

25             Do you go to these websites and look at these documents

1           that are reflected in these footnotes?

2       A    Yes, I have.

3       Q    And for what purpose?

4       A    Well, I mean, just to verify that, you know, the  
5           information that we're providing is the information that's  
6           there.

7       Q    Does OneWest rely on the information at those websites to  
8           know what its responsibilities are as the servicer?

9       A    Generally, yes.

10      Q    Can you tell the court specifically which document it  
11           would look at to know what its rights and obligations are as  
12           a servicer?

13      A    I would say the master purchase agreement is the operative  
14           document.

15      Q    And that's online?

16      A    Yes.

17      Q    In paragraph 6 of your declaration, you say that on March  
18           19th, 2009, the FDIC was appointed as receiver for IndyMac  
19           Federal Bank and sold most of the assets, including the  
20           rights to service the loan presently at issue, to OneWest  
21           Bank FSD. How do you know that the servicing rights for this  
22           loan were sold to OneWest Bank?

23      A    Again, you know, the loan is active on our system. When I  
24           became an employee at OneWest Bank, if a loan was not sold by  
25           the FDIC, it would not have been something that would have

1      been in our inventory, or at least it would have been flagged  
2      as to being service released to another entity.

3      Q      I'm going to ask you to look at Exhibit A-15 again. You  
4      should have an exhibit book in front of you. If you could  
5      look at Defense Exhibit A-5. Do you have that in front of  
6      you?

7      A      I do.

8      Q      Can you tell the court what this is?

9      A      Yes. This is a line entry from one of the schedules that  
10     was identified as mortgage loans in the servicing business  
11     asset purchase agreement.

12     Q      And what loan does it identify?

13     A      It identifies Loan No. 1009111244, with the property  
14     address being, I believe, 14840-119th Place Northeast,  
15     Kirkland, Washington 98034, and then it has various loan  
16     information.

17     Q      Is that Mr. McDonald's loan?

18     A      Yes.

19     Q      So Mr. McDonald's loan was attached to a schedule, or was  
20     part of a schedule that was attached to the agreement that  
21     sold servicing rights to OneWest Bank?

22     A      Correct.

23     Q      All right. Now, tell the court, is this -- what is this?  
24     Is this -- is there a single page for each and every loan in  
25     the attachment?

1 A No. This is a redacted version. There is -- the file is  
2 very large. It contains thousands and thousands of loans,  
3 and they have, you know, personal identifying information of  
4 other borrowers. So often when we create, you know, these  
5 documents for litigation, we'll just provide the single line  
6 with the headers.

7 Q All right. Now, you spent some time yesterday in  
8 preparation for testifying before the court today. You spent  
9 some time with documents, yes?

10 A Correct.

11 Q Okay. And did you look at this document?

12 A I did.

13 Q And did you look at the header?

14 A I did.

15 Q Is it correct?

16 A No. Actually, it looks as if there might have been a  
17 slight typo.

18 Q Well, it's an error in what schedule it refers to, right?

19 A Correct.

20 Q All right. What schedule should it refer to?

21 A It should refer to 1.01A.

22 Q All right. So whoever put this together, this excerpt  
23 from this schedule, one-point -- I'm sorry. Say it again?

24 A 1.01A.

25 Q Just put the wrong header?

1 A Yeah.

2 Q Did we -- did we ever figure out who at OneWest Bank put  
3 this together?

4 A We tried. You know, I asked the litigation specialist  
5 that was handling this case, even talked to one of the  
6 counsel -- to both counsels that were handling it, and just  
7 it wasn't -- we couldn't confirm how -- how the error  
8 occurred.

9 Q Did you bring the entire schedule with you today?

10 A I did.

11 Q And can you tell the court how many pages it is,  
12 approximately?

13 A Well, originally there's nine tabs that, again, contain  
14 several thousand loans on each tab. So we brought the tab  
15 that -- or I brought the tab that had contained this loan  
16 along with the various other loans.

17 Q And is it on your laptop computer?

18 A Yeah. It is something that I can access on my computer,  
19 but I did send it to my counsel, to Heidi.

20 Q The tab in --

21 A In its entirety.

22 Q All right. And we didn't print it out?

23 A No.

24 Q Please go to Tab 15 in Exhibit 15-A, which is that  
25 notebook, and let me know when you're there.

1 A Tab 15?

2 MS. DAO: I don't have that.

3 MS. VACURA: I'm sorry. Let me get you one.

4 Q (By Ms. Vacura) It's a separate notebook. Tab 15 in that  
5 notebook, and if you'd look at the last page of that tab.

6 A Oh.

7 Q Is this the same document we've been discussing?

8 A Yes.

9 Q All right. And if you could please look at the first page  
10 of this Tab 15, which is a pleading, defendant OneWest and  
11 others' second supplemental response to plaintiff's first  
12 request for production of documents. If you could go to the  
13 party's certification that's attached to this pleading. Do  
14 you see it?

15 A Yes. Is it dated the 1st of May?

16 Q Yes. Is that your certification?

17 A Yes.

18 Q All right. And it's dated May 1st of 2012?

19 A Correct.

20 Q All right. Thank you.

21 Mr. Boyle, I want to take you back to your declaration,  
22 please. Do you have that in front of you?

23 A I do.

24 Q It says in paragraph 10 -- paragraph 9, "OneWest has been  
25 in possession of the note and therefore the holder since on

1       or about March 19, 2009." Do you see that?

2       A     I do.

3       Q     And how do you know that?

4       A     Because it's part of the transferring of the servicing  
5           rights from the FDIC, there was also the rights to hold the  
6           note by our custodian. So I could have, on that date,  
7           contacted Deutsche Bank and said, "I need a copy of the  
8           original note, please send it to me," and they would have.

9       Q     All right. In the same notebook that has your declaration  
10           that you're looking at --

11      A     Uh-huh.

12      Q     -- if you would go to Tab 5, and it says Exhibit 7, that  
13           first page of one, and then the second page says, "Servicing  
14           business asset purchase agreement between FDIC and OneWest  
15           Bank." Is this the document that you're referring to -- that  
16           you just referred to?

17      A     Yes.

18      Q     And it's dated March 19, 2009?

19      A     Correct.

20      Q     All right. Then paragraph 10 says, "On or about October  
21           1, 2009, plaintiff defaulted by failing to make payment due  
22           for October 1, 2009, and every payment thereafter due."

23           So in other words, the bank -- OneWest Bank has not  
24           received a payment from McDonald since October 1 of 2009?

25      A     Correct.

1 Q And that's still true today?

2 A Correct.

3 Q And how do you know that statement is accurate?

4 A Because I would have actually gone to the DLQ1 screen to  
5 verify when the next payment due date was, and I would have  
6 looked at the payment history.

7 Q And did you -- is that the -- again, if you refer to  
8 Exhibit 15A, which is the notebook, Tab 2, is that  
9 information that you just talked about reflected in that  
10 DLQ1?

11 A Yes, it is.

12 Q Then you say, "On or about January 12, 2010, as an agent  
13 for OneWest Bank, Northwest Trustee Services mailed and  
14 posted a notice of default in response to plaintiff's  
15 default." Do you see that?

16 A Yes, I do.

17 Q Again, how do you know that's true?

18 A Again, I would have looked at our servicing system. I  
19 would have looked at the notice of default. And, you know,  
20 once I looked at the notice of default, I would have  
21 confirmed that Northwest Trustee Services was, in fact, the  
22 agent of OneWest Bank, and, you know, by virtue of it, the  
23 available -- I would assume it's mailed, because that is our  
24 regular business practice, to generate these letters once  
25 they're mailed.

1 Q All right.

2 A Or rely on our trustees to ensure that they're mailed.

3 Q All right. Do you have in front of you, Mr. Boyle,  
4 defendant's exhibits, this little, skinny notebook?

5 A Yes.

6 Q If you could please look at Tab 9.

7 A Okay.

8 Q Does this reflect the information that you have in your  
9 declaration?

10 A Um...

11 Q First of all, tell the court what this is.

12 A This is a printout of our consolidated notes log. It is  
13 the notes log that is kept just in our -- again, in the  
14 normal course of business. Once, you know, customer service  
15 or a foreclosure specialist or even our outside counsel  
16 enters in information, it shows up on this log. So that --  
17 you know, the information is usually entered in, you know, at  
18 the time, or it shows up at the time the information is  
19 entered.

20 Q All right. And is that a document that you would go to to  
21 gather information about a loan?

22 A Yes.

23 Q And did you use that document in this case at any point to  
24 gather information about Mr. McDonald's loan in order to  
25 attest to the facts that are in your declarations?

1 A It's possible, yes.

2 Q Then paragraph 12, you talk about MERS executing an  
3 assignment of deed of trust, where it assigns its interest to  
4 OneWest Bank. Do you see that?

5 A Yes.

6 Q All right. And you refer to Exhibit 10 to your  
7 declaration, and you're talking about a true and correct copy  
8 of that, right?

9 A Correct.

10 Q Where do you normally get your true and correct copies of  
11 documents like this?

12 A They -- again, they can be found in multiple places. They  
13 can be found in the imaging system. It could be uploaded in  
14 my litigation file, as well as we can go to the county  
15 website and access it, if we needed to, or, generally, it  
16 would be in the foreclosure servicing application as well.

17 Q And do you generally find that if you're looking for  
18 something like this on the imaging system or in the  
19 litigation file, that it is a reliable document?

20 A Yes.

21 Q And that it, in fact, is a true and correct copy of the  
22 original?

23 A Yes.

24 Q And are these business records that are kept by OneWest  
25 for purposes of doing business like this?

1 A Yes.

2 Q I want to take you back for one moment to paragraph 11.

3 If you could look at Exhibit 9 to your declaration. Are you  
4 there?

5 A Where is that located?

6 Q It's right behind your declaration we're talking about.

7 Your declaration that we're talking about right now, behind  
8 it in Exhibit 9.

9 THE COURT: Tell him the tab.

10 MS. VACURA: It's Tab 2.

11 THE COURT: So Tab 2, and then behind your  
12 declaration is something that says, "Exhibit 9."

13 MS. VACURA: Yeah, and that's not accurate.

14 THE WITNESS: Oh, okay.

15 MS. VACURA: Sorry. We'll come back to it.

16 Q (By Ms. Vacura) If you would please look at Exhibit 13.  
17 It says Brian Burnett was an employee of OneWest. Brian  
18 Burnett also has authority granted by MERS to execute  
19 documents on behalf of MERS, and a true and correct copy of  
20 the MERS corporate resolution granting Burnett signing  
21 authority is attached to defendant's motion as Exhibit 11.

22 How do you know that Brian Burnett is an employee of  
23 OneWest Bank?

24 A He was an employee of OneWest Bank. I used to work with  
25 Brian Burnett.

1 Q And that's how you know?

2 A Yes.

3 Q And how do you know he had signing authority from MERS?

4 A I knew that he often signed on behalf of MERS, and I --  
5 previously I was a MERS signer, so I knew that in order to be  
6 a MERS signer, you had to be certified, you know, by MERS  
7 itself.

8 Q All right. Did you ever see a document with his --  
9 authorizing him to act as an agent for MERS?

10 A Yes.

11 THE COURT: Counsel, I don't need to know every  
12 source of every piece of information. I think I understand  
13 now where Mr. Boyle is getting his information from. Let's  
14 go to the actual physical possession and location of the  
15 original note.

16 MS. VACURA: All right. That is, Your Honor, going  
17 to be mostly testimony from Mr. Corcoran.

18 THE COURT: Sure. And I take it, then, that the  
19 times that Mr. Boyle referred to "OneWest has the note," he  
20 always meant to say, "through our agent Deutsche Bank."

21 MS. VACURA: Yes, until a certain date when it was  
22 physically sent to counsel for OneWest, and at that point  
23 counsel for OneWest had the original note.

24 But, yes, up until that time, when at any point that  
25 Mr. Boyle would have said in a declaration that it was

1 possessed by OneWest, it would have actually been in the  
2 actual physical possession of Deutsche Bank.

3 THE COURT: And then for purposes of the relationship  
4 between Deutsche Bank and OneWest, in terms of authority or  
5 agency or anything, do we have the documents that establish  
6 the contractual relationship and the responsibilities in here  
7 already?

8 MS. VACURA: Yes, we do, Your Honor, and Mr. Corcoran  
9 can speak to that.

10 THE COURT: So then the only thing we really need to  
11 get from Mr. Boyle from my order of December 6 was the  
12 apparent contradiction between the lack of notice of the  
13 dispute form from Experian and OneWest's file and what  
14 Experian supposedly told the plaintiff?

15 MS. VACURA: Yes. Thank you, and we will go to that.

16 Q (By Ms. Vacura) Mr. Boyle, you signed a declaration, and  
17 I'll direct you to it. If you could look at Tab 9 of the  
18 notebook that says, "Declarations of Charles Boyle."

19 A Okay.

20 Q In this declaration, you state that -- at paragraph 21,  
21 the last page of the declaration, "To date, OneWest has not  
22 received dispute resolution relating to plaintiff's loan from  
23 Experian," correct?

24 A Correct.

25 Q And at the time you signed this declaration, why did you

1 say that?

2 A Because at that time we didn't have an ACDV available.  
3 The only ACDVs that we had available in our imaging system  
4 were from the other two credit bureaus. So at that time  
5 there was just, you know -- I believe the litigation  
6 specialist verified with our customer service group, and, you  
7 know, asked if they could find the -- you know, an ACDV for  
8 this actual -- from -- I'm sorry -- from Experian.

9 Q Let's back up a minute, Mr. Boyle, and let's just give the  
10 court, quickly and generally, an idea of how it is these  
11 records are kept by OneWest.

12 So a complaint comes from a customer to the credit  
13 bureau. What does the credit bureau do with that complaint?

14 A The credit bureau will then send it to the bank in an  
15 electronic form as a complaint, or, like, a dispute form.  
16 The customer service group is responsible for handling these  
17 matters. They will review the information and review the  
18 dispute, verify certain information in the dispute, and, you  
19 know, what the allegations are.

20 If they find that there is something that needs to be  
21 corrected, they'll make a correction. If there is no  
22 correction, they say no corrections are needed, everything  
23 was validated.

24 Generally, what they then will do is they print it out to  
25 our imaging system, which, as it states, will create a draft

1 watermark, and then it's kept in our image repository system  
2 for, you know, as long as -- the life of the loan.

3 Q All right. Go to Exhibit A, please, of your declaration,  
4 and this at the top says, "TransUnion LLC," and it has a  
5 date, and then it has a bunch of information in it. Is this  
6 the document that is returned to TransUnion?

7 A I believe so, yes.

8 Q And is this the document that you make a copy of on your  
9 imaging system?

10 A Correct.

11 Q When you say you make a copy, are you talking about a  
12 paper copy?

13 A No. It's just -- a print to PDF, so it's an electronic  
14 copy.

15 Q And it's saved on what system?

16 A Our imaging system.

17 Q And that's Web Ex?

18 A Web Extender, yes.

19 Q At the time you prepared this declaration, was there a  
20 copy of a document like this one that says TransUnion at the  
21 top, was there a copy of a similar document for Experian in  
22 the Web Ex system?

23 A No, there wasn't.

24 Q All right.

25 Could you have said there is no document from Experian

1       in the Web Ex system in your declaration?

2       A     Yes, I could have.

3       Q     Now, you know that Mr. McDonald has since provided the  
4           court with a response from Experian that reflects that, in  
5           fact, Experian did send an ACDV to OneWest, yes?

6       A     Correct.

7       Q     All right. What has OneWest done since the time  
8           Mr. McDonald provided that to the court to determine whether  
9           it got an ACDV from Experian?

10      A     Well, we contacted our customer service group that  
11           manages -- that handles this process, and we asked them to  
12           actually contact Experian to try and get a copy. We tried on  
13           multiple occasions, I believe three, to get a copy, but we  
14           were being told that we couldn't obtain a copy. In fact, a  
15           lot of times they said it was company policy that they would  
16           only provide it with a court order.

17      Q     All right. And did anyone look back in the Web Extender  
18           file for an electronic copy within OneWest's documents?

19      A     Yes.

20      Q     And was one found?

21      A     No.

22      Q     Have you come to any conclusion as to why that is?

23      A     We don't know. I mean, it could have been -- it is a  
24           manual process. It could have just been human error.

25      Q     All right.

1 MS. VACURA: And then, Your Honor, I think the other  
2 question that you had in your order for an evidentiary  
3 hearing related to the pulling of the credit report, and I  
4 believe that the record reflects that it was pulled, and  
5 counsel is going to address that issue. So I don't believe  
6 that he has any more to offer.

7 THE COURT: Great. I think that's enough testimony  
8 from Mr. Boyle.

9 MS. VACURA: All right.

10 THE COURT: Was there anyone on the defense side that  
11 had any additional questions for Mr. Boyle?

12 MR. KATZ: No, Your Honor.

13 THE COURT: Ms. Dao?

14 MS. DAO: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. DAO:

17 Q Good morning, Mr. Boyle. I'm going to go backward from  
18 the most recent discussion that your counsel has asked you,  
19 and then we'll go back.

20 But with regards to your testimony that you make a  
21 statement in your declaration at the time, and then you found  
22 out later that there was an error.

23 When you made the declaration, you swore under penalty  
24 of perjury that you had personal knowledge, correct, of the  
25 matters you're declaring?

1 A I just want to look at the declaration.

2 I believe what I said is, "I declare under penalty of  
3 perjury that the foregoing is true and correct to the best of  
4 my knowledge."

5 Q Okay. And your testimony is that you did not do the  
6 verification yourself? Somebody else did in OneWest?

7 A I don't know. I definitely looked at the ACDVs and  
8 confirmed the information that was in them. I did not  
9 produce them.

10 Q When did you ask Experian for a copy?

11 A I don't recall offhand when we -- when the first  
12 initiation with Experian was, but as recently as, I believe,  
13 yesterday.

14 Q As recently as yesterday?

15 A Uh-huh.

16 Q So we don't have anything that your counsel produced in  
17 the discovery relating to the activities that you're  
18 testifying to here today, especially with regards to  
19 yesterday your checking to see whether you had a copy or not?

20 A Well, I mean, I -- you know, I personally spoke with the  
21 customer service representative. I don't know what kind of  
22 evidence we would produce to evidence that.

23 Q Would there be any notes by the customer service  
24 department as to any activities?

25 A Possibly.

1 Q Including your inquiry?

2 A Possibly.

3 Q But we don't have a record of that, is what I'm asking  
4 you.

5 A I don't believe so.

6 Q Now, I want to go to the question of the pulling of  
7 Mr. McDonald's credit. Who decided to do that?

8 MS. VACURA: Your Honor, I'm objecting to the extent  
9 that this question is asking for attorney-client privileged  
10 communications. I think it's clear that counsel had the  
11 credit report pulled.

12 THE COURT: Well, we may be getting into some of that  
13 area here, but there's certainly no waiver of the  
14 attorney-client privilege if he just says, "My lawyer or  
15 counsel asked me to do it." Go ahead and answer.

16 A I believe it was from the request of my attorney.

17 Q (By Ms. Dao) And at the time that you pulled the report,  
18 did you have permission from Mr. McDonald?

19 A Did we have specific authorization to pull his credit  
20 report? I don't believe so.

21 Q Did you inform him before you pulled his credit?

22 A I don't know.

23 Q Did you, or did you not?

24 THE COURT: Well, it's not really the issue that I  
25 wanted the evidentiary hearing about, so I'm going to rule

1           that question beyond the scope here.

2       Q    (By Ms. Dao) Let me move on and ask you some questions  
3       back on your declaration about -- this would be Tab 2 of the  
4       large notebook of declarations. Let me go from the bottom,  
5       which is the last page, paragraph 13, where you said Brian  
6       Burnett was an employee of OneWest.

7       A    Yes.

8       Q    And that he had authority granted by MERS to execute  
9       documents, and in particular you're referring to the  
10      assignment of the deed of trust in this case, correct?

11      A    Correct.

12      Q    So here at paragraph 13 and 12, you indicate there exists  
13      a resolution or authority for Mr. Burnett to do that?

14      A    Yes.

15      Q    And then you provided a copy of that authority; is that  
16      correct?

17      A    That was one of the copies.

18      Q    Okay. And that would be Exhibit 11, which would be right  
19      in front of that tab, Mr. Boyle? The number -- the exhibit  
20      number is on the bottom right-hand corner, right in front of  
21      Tab 2.

22      A    Yes.

23      Q    Do you see that?

24      A    I don't have the exhibit in front of me. I don't know  
25      which one you're talking about.

1 Q How about try Tab 1 in the same notebook.

2 THE COURT: You can put it on the ELMO, if you know  
3 how to use that.

4 MS. DAO: I don't, Your Honor. Sorry.

5 Q (By Ms. Dao) These are the exhibits that were attached to  
6 Tab 1.

7 THE COURT: What exhibit number are you asking about?

8 MS. DAO: Exhibit 11, Your Honor, the bottom  
9 right-hand corner, page 1 of 3.

10 THE WITNESS: Yes, I see.

11 Q (By Ms. Dao) Can you tell me the date of that?

12 A This is dated August 19, 2010.

13 Q Okay. And when was the assignment executed by  
14 Mr. Burnett?

15 A It was executed in January, I believe, of 2010.

16 Q So that was prior to this authority?

17 A Well, there was also -- I believe I have looked at another  
18 resolution, which said his signing authority was effective as  
19 of November of 2009.

20 Q But at the time that you swore out this declaration and  
21 referred to the exhibits, this particular exhibit did not  
22 match the signing date of when Mr. Burnett executed the  
23 assignment?

24 A Well, it just had a different date, but I knew at that  
25 time he did have authority.

1 Q At which time?

2 A As of January of 2010.

3 Q But my question is that you did not produce a document to  
4 verify that?

5 A This document just has -- yes, it is dated in August.

6 Q Okay. You testified that Northwest Trustee acted as agent  
7 for OneWest for purposes of foreclosing on Mr. McDonald's  
8 home?

9 A I believe it said it was for purposes of sending the  
10 notice of default.

11 Q Okay. So let me take you to the notice of default, which  
12 is Exhibit 9, right before Exhibit 10 and 11, same area.

13 A It's Exhibit 9?

14 Q Yes. Do you see it?

15 A Yes, I've got it.

16 Q If I could refer you to the last page of Exhibit 9,  
17 paragraph 2, under "L." Do you see that?

18 A Yes.

19 Q What does it say?

20 A I'm sorry? Paragraph? Which portion?

21 Q Two.

22 A "The creditor to whom the debt is owed, OneWest Bank FSB."

23 Q And what date is that notice of default?

24 A January 12th, 2010.

25 Q Is that an accurate statement of the nature of OneWest's

1           interests on that date?

2           MS. VACURA: Objection to the extent it's calling for  
3           a legal conclusion.

4           THE COURT: Yes. It's just your understanding.

5           A My understanding is we were the servicer at the time,  
6           acting on behalf of Freddie Mac Bank.

7           Q (By Ms. Dao) Which is different than the creditor to whom  
8           the debt is owed?

9           A I mean, I -- I don't want to guess as to what the legal  
10          meaning of "creditor" is.

11          Q Okay. You're not denying that the statement says what it  
12          is?

13          A Yeah, that's what the sentence states.

14          Q And can we assume from your testimony that when Northwest  
15          acted as agent for OneWest, that OneWest did furnish accurate  
16          information for the agent to act?

17           MS. VACURA: Objection.

18           THE COURT: It's not helpful to my analysis here. Go  
19          ahead. Asked another question, counsel.

20          Q (By Ms. Dao) With regard to the January 12, 2010, do you  
21          know what possession -- what control that OneWest had with  
22          regards to the note?

23           THE COURT: The original note?

24          Q (By Ms. Dao) The original note.

25          A That was my understanding. I'd have to look in my

1 records, but it was my understanding it was held by the  
2 custodian at the time.

3 Q So in order to furnish the trustee or Mr. McDonald with a  
4 copy of the note, how did you go about doing that?

5 A I'm sorry. Repeat the question.

6 Q At that time, in January of 2010, did OneWest provide  
7 Northwest Trustee with a copy of the original note?

8 A You know, I'd have to look at my records, but I believe a  
9 copy was supplied. I don't know exactly when the original  
10 was requested.

11 Q Are you familiar with the contents -- let me ask you this  
12 question: Do you keep a paper copy of the litigation that is  
13 currently being discussed?

14 THE COURT: I don't understand the question.

15 Q (By Ms. Dao) Do you have a hard copy of all the pleadings  
16 and documents that were filed in this case?

17 THE COURT: He himself?

18 MS. DAO: Yes.

19 A I mean, I have a binder that I looked at that had some  
20 pleadings.

21 MS. DAO: All right. I'm going to show you this  
22 particular letter that I will represent to the court and to  
23 counsel that it was given to my client as part -- as a  
24 response to his qualified written request, and it was  
25 attached to his amended complaint, and that would be

1 Docket 68.

2 May I approach, Your Honor?

3 THE COURT: Yes.

4 Q (By Ms. Dao) Mr. Boyle, I'd like you to take a moment and  
5 look through that document that I've handed you, which I'll  
6 have marked and entered into as an exhibit from the  
7 plaintiff.

8 I would like for you to review it, and tell me whether it  
9 resembles or appears to be something that came from OneWest.

10 MS. VACURA: Objection; beyond the scope.

11 THE COURT: Well, I don't know what it is. May I  
12 take a look at it?

13 MS. DAO: I apologize, Your Honor. I have a copy  
14 here.

15 THE COURT: Well, you can certainly ask him if he  
16 recognizes it, but I don't think he should be in a position  
17 to be authenticating the document if he's never seen it  
18 before or anything like that.

19 Does it look familiar to you?

20 THE WITNESS: I believe I have seen this.

21 THE COURT: Okay. Then you can ask him questions  
22 about it.

23 Q (By Ms. Dao) I would like you to pay particular attention  
24 to the copy of the note that is attached to that letter,  
25 Mr. Boyle.

1 A Okay.

2 Q Does that look to you to be a true and exact copy of the  
3 original note?

4 MS. VACURA: I'd like a continuing objection to this  
5 line of questioning being beyond the scope of the direct  
6 examination.

7 THE COURT: Overruled. This is appropriate.

8 A I'd have to look at the original note again, but I believe  
9 it does look similar already.

10 THE COURT: Well, similar --

11 A It looks as though it is a copy of the note.

12 THE COURT: This is marked as Plaintiff's Exhibit 1  
13 for identification.

14 MS. DAO: Thank you, Your Honor.

15 Q (By Ms. Dao) Mr. Boyle, do you recall in this case that  
16 Mr. McDonald filed for bankruptcy Chapter 11?

17 A I don't know.

18 Q I'm sorry. Chapter 7.

19 A Chapter 7? I believe so.

20 Q And are you aware that OneWest had requested the law firm  
21 of Routh Crabtree to represent them in a motion for relief  
22 from stay in that particular case?

23 A I don't know.

24 Q Let me go back to Tab 2 of your declaration, Mr. Boyle.

25 In paragraph 2, you said that Mr. McDonald executed a

1       deed of trust and a note, and you also declared that true and  
2       correct copies of the note and deed of trust are attached to  
3       the defendant's motion as Exhibits 1 and 2. Do you see that?

4       A     Yes.

5       Q     And that is your declaration?

6       A     Yes.

7       Q     So if we go back to Tab 1 and look at Exhibit 1 and 2, and  
8       this is the area where you were looking at Exhibit 9 and 11,  
9       so towards the front, right after the pleadings.

10           THE COURT: It looks like page 17 in the top corner.  
11           He's there.

12           THE WITNESS: Yes.

13       Q     (By Ms. Dao) Can you look at Exhibit 1 and tell me if  
14       that appears to be a true and exact copy of the original  
15       note?

16           Let me ask one question to lay the foundation.

17           Have you personally inspected or examined the original  
18       note at any time during the course of this litigation?

19       A     Yes.

20       Q     How many times would you say that you have done that?

21       A     I don't recall.

22       Q     And can you tell the court the occasions on which you  
23       reviewed or inspected the original note?

24       A     I looked at it as recently as yesterday.

25       Q     Okay. How about before yesterday?

1 A I don't know.

2 Q And when you looked at it yesterday, whose custody was it  
3 in?

4 A My counsel's.

5 Q And do you recall an occasion when you looked at it before  
6 yesterday?

7 A I don't know.

8 Q So let me refer you to Exhibit 1 -- back to Exhibit 1.  
9 Take a moment and look at that note, and I want you to pay  
10 particular attention to the signature page with the blank  
11 endorsement.

12 MS. VACURA: Your Honor, I object to the attachments  
13 to this letter. He has authenticated or said he has seen  
14 before the letter that's headed "OneWest Bank." She has not  
15 asked him about the attachments or whether he's seen them  
16 before, so I don't believe, therefore, that she can properly  
17 ask him questions about that document.

18 THE COURT: Okay. Mr. Boyle, do you still have the  
19 plaintiff's exhibit that Ms. Dao gave you? Look at the last  
20 page of the note on that one and compare it to the last page  
21 of the note in Exhibit 1.

22 Do you see how the signature line, "Pay to the order of  
23 without recourse" has moved from the far left on one  
24 document, and it's on sort of the center right on the other  
25 document?

1                   THE WITNESS: Yes, I see that.

2                   THE COURT: Do you have any explanation for how that  
3 might have happened in the copying, or anything like that?

4                   THE WITNESS: I don't know.

5                   THE COURT: Okay.

6                   MS. DAO: Thank you, Your Honor.

7       Q   (By Ms. Dao) So your testimony is that Exhibit 1 is a  
8 true and exact copy of the original note, as you're sitting  
9 here on the stand today?

10      A   Yes. That was my testimony in the declaration.

11                  THE COURT: You looked at it yesterday. Do you  
12 remember where this line was?

13                  THE WITNESS: No, I didn't compare the two.

14                  THE COURT: Counsel, as an officer of the court,  
15 could you represent to me where the signature is on the  
16 original?

17                  MS. VACURA: Yes, Your Honor.

18                  THE COURT: It's on the center right?

19                  MS. VACURA: Yes.

20                  MS. DAO: Thank you, Your Honor.

21       Q   (By Ms. Dao) Now, you indicated that there was an error  
22 in the attachments of one of the documents that were produced  
23 to the plaintiff with regards to the servicing schedule. Do  
24 you remember that testimony?

25      A   Correct.

1 Q And my understanding is that OneWest had control of these  
2 documents, and when the redaction occurred, it was  
3 actually -- it was done by OneWest?

4 A Again, we tried to confirm who did the redaction. I could  
5 never do that, or I could never confirm if it was by counsel  
6 or if it was by my litigation specialist. But when I went  
7 and independently looked at the schedule, I was able to find  
8 the exact same information. It was just the way it was  
9 titled -- the schedule, the way it was titled, it was just a  
10 different title.

11 Q How did you account for that?

12 A Sorry?

13 Q How did you account for the error that occurred?

14 A Again, I think it was human error. It's a spreadsheet  
15 that's created.

16 Q Created by whom?

17 A By -- again, it could have been the litigation specialist,  
18 my counsel.

19 Q And so as far as the different positions of the blank  
20 endorsement here, you can't explain that either?

21 A I can't, not right now.

22 Q I recall that your testimony was that there isn't any  
23 document in the possession of OneWest that would speak to the  
24 sales by IndyMac Bank and the original lender to Freddie Mac,  
25 correct?

1 A I believe so.

2 Q And I believe that your testimony was that the documents  
3 would be within the FDIC control?

4 A If they existed.

5 Q And can you tell me why that would be? Why would it be  
6 under the FDIC control?

7 A Because the FDIC became the receiver for IndyMac Bank and  
8 IndyMac Federal Bank, and any assets that they possess, the  
9 FDIC would be in control of.

10 Q But you're just speculating. You don't know for sure?

11 We're talking about a document that evidences the sale  
12 of Mr. McDonald's note by the original lender to Freddie Mac.

13 A Again, if it existed, yeah, it would be in the possession  
14 of the FDIC.

15 Q Are you aware in this case that Mr. McDonald was advised  
16 that his loan was securitized into a mortgage-backed  
17 securities pool?

18 A I'm not aware of that.

19 Q Do you have any reason to believe otherwise?

20 A Believe otherwise that it was securitized?

21 Q Yes.

22 A I just don't know.

23 Q Do you have any knowledge of whether it was a direct sale  
24 from IndyMac to Freddie Mac?

25 A I don't know.

1 Q You don't know whether or not it was a single sale or a  
2 wholesale group of loans?

3 A Off the top of my head, I don't know.

4 Q Is it fair to say you really don't have any knowledge with  
5 regard to that sale, the sale of Mr. McDonald's loan to  
6 Freddie Mac by IndyMac?

7 A No.

8 Q The documents in this litigation have contained two  
9 separate references. Now, in your declaration, you said that  
10 Freddie Mac is the investor and owner; is that correct?

11 A I don't --

12 Q Well, let's look at your declaration again, which is  
13 Tab 2, paragraph 3.

14 A Correct, yes.

15 Q Okay. So what is your understanding as someone who has  
16 experience working with several banks, including OneWest,  
17 what does it mean by "an investor"?

18 A It's someone who is holding beneficial rights to the loan,  
19 someone who is entitled to payments that are collected from  
20 the borrower.

21 Q So that entity would be acting in a trust capacity?

22 A I don't necessarily know that this was ever put into a  
23 trust.

24 Q But -- all right. So that is -- that's your understanding  
25 of what an "investor" means?

1                   THE COURT: He answered that question.

2   Q   (By Ms. Dao) And how about "owner"? What's the  
3       difference between an investor and an owner?

4   A   To me, I believe they are similar terms. I wouldn't want  
5       to opine as to what the legal, you know, definitions are,  
6       but, generally, an investor and an owner is similar.

7   Q   I'm trying to ascertain as to paragraph 3, here in your  
8       declaration, what is the basis of your actual knowledge or  
9       information that led you to conclude or to write that Freddie  
10      Mac is the owner and investor?

11                  THE COURT: Was part of the declaration done by the  
12      lawyers for you?

13                  THE WITNESS: Yes.

14                  THE COURT: So you didn't write every word yourself?

15                  THE WITNESS: No.

16                  THE COURT: That's not the first time that's  
17      happened.

18                  MS. DAO: If I could have a moment, Your Honor.

19                  THE COURT: Sure.

20   Q   (By Ms. Dao) I want to ask you about your duties as vice  
21       president of OneWest. What are the duties that you perform  
22       in a typical day?

23   A   Again, on a typical day, I will review documents, will  
24       have several meetings. They could be low-level meetings,  
25       they can be management meetings.

1 Q Do you review -- is it part of your duty as VP to be  
2 involved -- obviously, your duty is specifically to be  
3 involved in litigation?

4 A Correct.

5 Q And both in civil cases and bankruptcy cases?

6 A Yes.

7 Q And normally you would not review any files unless it's  
8 relating to a litigation of some sort?

9 A Not necessarily.

10 Q Okay. So can you tell us how you would be involved as a  
11 declarant in a particular litigation or in a particular case?

12 A Many times I have -- as an officer of the bank, I have  
13 signing authority for the bank. So if there is a document  
14 that requires an officer of the bank to sign, then I will  
15 sign it. And also as just the head of the department, I am  
16 one of the senior managers, and so I will sign documents.

17 Q Documents as in particular declarations and affidavits?

18 A Declarations, affidavits, settlement agreements.

19 Q Focus on declarations and affidavits only. How many of  
20 those would you execute in any given day?

21 A In any given day, I mean, it could be anywhere from none  
22 to possibly six.

23 Q And when you have the need to do that, what steps do you  
24 take in order to swear out declarations?

25 A I will obviously get the document. I will read through

1       it. I will ensure that the exhibits are appropriate that are  
2 attached. I will verify facts such as default dates by going  
3 to the system, reviewing the loan file, and just verifying  
4 that the information is correct.

5       Q     So with regards to your declaration at Tab 2, have you  
6 done the same? Have you taken those steps?

7       A     If I signed it, I would assume, yes, I did.

8       Q     And just to clarify, when Judge Lasnik referred to the  
9 lawyer prepared it for you, was it this case in Tab 2?  
10      These were not your words, these are what the lawyer drafted  
11      for you to sign?

12      A     I help, obviously, with some of the construction. If  
13      there is an error in the document or a misstatement, I will,  
14      you know, contact counsel or let my litigation specialist  
15      know that this needs to be changed; that, you know, in order  
16      for me to sign it, you know, corrections may need to be made.  
17      Not in every case, but in some cases, yes.

18      Q     Logistically speaking, do you draft it out and give it to  
19      the lawyer, or in this case did the lawyer draft it and then  
20      give it to you?

21      A     You know, yes, I think normally our attorneys will draft  
22      the declarations.

23      Q     Normally? What about this particular declaration in  
24      Tab 2?

25      A     I believe so.

1 Q Are there employees or corporate officers of OneWest that  
2 have functions similar to yours, that you can think of?

3 A Sorry. Repeat the question.

4 Q Are there -- is there any of your counterparts, people who  
5 have similar functions as you do?

6 A Yes.

7 Q Who?

8 A You know, I have a manager that reports directly to me.  
9 She signs some declarations. There are --

10 Q What is her name?

11 A Her name is Rebecca Marks.

12 Q And are you familiar with JC San Pedro?

13 A Yes.

14 Q And who is he? I assume it is a he.

15 A Yes, it is a he. He works at OneWest Bank.

16 Q Does he have similar functions as you do?

17 A Honestly, I don't recall exactly what his functions are  
18 until right now. But, yes, you know, any officer of the bank  
19 has signing authority.

20 Q Do you know who Charmagne Williams is?

21 A I do.

22 Q And who is she?

23 A Again, she's an assistant vice president with the bank.

24 Q And does she have similar duties that you do?

25 A No, she doesn't.

1 Q Do you know whether she has submitted declarations,  
2 affidavits in this particular case?

3 A I don't believe she has, but I don't recall offhand.

4 Q Do you know who Erica Johnson-Seck is?

5 A Yes.

6 Q Who is she?

7 A She's a first vice president in the default servicing  
8 group.

9 Q How many vice presidents are in your group?

10 A In my group, specifically in the litigation group, there  
11 is myself, and then we have three in-house counsel. I report  
12 to a senior counsel, and she's an FVP, first vice president.

13 Q Is it your testimony that Ms. Erica Johnson-Seck is in the  
14 same department as you are?

15 A No. She's in the default servicing group.

16 Q And the title of vice president, does it carry with it a  
17 premium pay?

18 A I don't know.

19 MS. VACURA: Your Honor, beyond the scope.

20 THE COURT: Yes, beyond the scope.

21 We're going to take a break now. Ms. Dao, I don't know  
22 how much more you have, but it's time to move on to other  
23 areas, if you have other areas.

24 When we come back, we're actually going to do  
25 Mr. Corcoran, so let's arrange for him to be ready to go at

1 10:45.

2 How long of a direct do you have of Mr. Corcoran?

3 MS. VACURA: At the outside, a half-hour, Your Honor.

4 THE COURT: And how much cross do you need for  
5 Mr. Corcoran?

6 MS. DAO: Not much, but I'd like to have the  
7 opportunity to put my client on the stand, briefly.

8 THE COURT: We'll see where we are at that point.

9 Mr. Boyle, you can stay.

10 THE WITNESS: I have a flight at 2:40.

11 THE COURT: We'll be done by noon, absolutely done by  
12 noon. We'll be back at 10:45.

13 (A RECESS WAS TAKEN.)

14 THE COURT: Kerry, you have Mr. Corcoran on the  
15 phone. Mr. Corcoran, could you please acknowledge that you  
16 are here?

17 THE WITNESS: I am here.

18 THE COURT: And would you please stand up and raise  
19 your right hand, and my clerk is going to swear you in.

20 THE WITNESS: I'm standing, and I have my right hand  
21 raised.

22 CHRISTOPHER CORCORAN, HAVING BEEN FIRST DULY SWORN,  
23 TESTIFIED AS FOLLOWS:

24 THE COURT: You may be seated, and you are first  
25 going to be questioned by an attorney from the defendant's

1 side, that is your side. Ms. Vacura?

2 MS. VACURA: Your Honor, I'll be referring to Docket  
3 205. I have a hard copy.

4 THE COURT: Okay.

5 DIRECT EXAMINATION

6 BY MS. VACURA:

7 Q Mr. Corcoran, this is Julie Vacura. We have spoken prior  
8 to today, right?

9 A Correct.

10 Q All right. So, Mr. Corcoran, could you please start by  
11 telling the court, generally, what your -- where you work and  
12 what your job entails?

13 A I work at Deutsche Bank National Trust Company. We are  
14 the document custodians -- of my division, document custodian  
15 trustee for mortgage-backed security transactions and other  
16 transactions.

17 My job specifically entails working in the document  
18 custody group, and I am a supervisor for a team of client  
19 services, for people where we have kind of main day-to-day  
20 contact with mortgage companies and Wall Street firms, with  
21 reporting and coordinating the shipping of files, receipt of  
22 files, review of files, reporting of positions, and things  
23 like that.

24 Q And do you work with mortgage loan servicers?

25 A Yes, we do work with mortgage loan servicers.

1 Q And is any of the work that you do as a custodian of  
2 records governed by the Seller/Servicer Guide?

3 A We work with the agencies, and we have guides that govern  
4 our responsibilities.

5 Q And does Deutsch work with Freddie Mac?

6 A Yes, we do.

7 Q All right. And when working with Freddie Mac, do you  
8 refer to the Seller/Servicer Guide that's online with regard  
9 to your relationship with Freddie Mac?

10 A Yes, we do.

11 Q All right. I'm going to ask you, do you have in front of  
12 you your declaration that you signed on November 13, 2012?

13 A Yes, I do.

14 Q All right. I'm going to ask you, please, to look at the  
15 first exhibit. It says at the bottom, "Exhibit A, page 1 of  
16 13." Can you tell the court what this document is?

17 A I have that document. This is a custodial agreement,  
18 Deutsche Bank and Freddie Mac and OneWest Bank, where  
19 Deutsche Bank acts as a document custodian for pools of loans  
20 with Freddie Mac and OneWest Bank as the seller/servicer.

21 Q And what do you mean by "pools of loans"?

22 A Loans are pooled in mortgage security-backed transactions.  
23 When I say "pooled," they're grouped together with loans of  
24 similar characteristics, and bonds are sold and backed by the  
25 payments of these loans.

1 Q And what is your role with regard to these pooled loans  
2 and Freddie Mac and this servicer?

3 A We are the document custodian. We're holding the mortgage  
4 loan collateral files.

5 Q All right. This agreement is dated May 12, 2009, correct?

6 A That is correct, yes.

7 Q And if you look at the very last page, it's got a  
8 signature by Tom Yoshida, and then a signature by you on  
9 behalf of Deutsche Bank, yes?

10 A That is correct.

11 Q All right. Now, have you actually read this agreement?

12 A I have not read every page of this agreement, no.

13 Q Does it, to the extent that you have reviewed it, is it a  
14 typical custodial agreement for Deutsche Bank?

15 A It's a standard custodial agreement for Deutsche Bank and  
16 Freddie Mac.

17 Q After the date of this agreement, May 12, 2009, would you  
18 have sent any loan file that was being held by you pursuant  
19 to this custodial agreement to OneWest if it had asked for  
20 it?

21 A If asked and we received the proper request form, we would  
22 send the file to OneWest, correct.

23 Q And why would you do that?

24 A They are the servicer under this agreement, and they have  
25 the ability to request a file from us.

1 Q All right. Now, how do you know that this custodial  
2 agreement -- well, let me ask you this first: If you could  
3 please go to Exhibit B attached to your declaration, and at  
4 the top it says, "Complete loan file information."

5 A Okay.

6 Q Tell the court, please, what this is.

7 A This is a snapshot of a screen from Deutsche Bank's  
8 document custody system, and it just shows kind of a quick  
9 snapshot of some of the transactions and the history of this  
10 loan file -- this particular loan file.

11 Q And in this case is it the loan of Mr. McDonald?

12 A Yes. It says James B. McDonald is the borrower.

13 Q And at the top it has a loan number. Do you know what  
14 that is?

15 A The loan number is the loan number assigned to it by  
16 OneWest.

17 Q All right. And then there's a secondary loan number. Do  
18 you know what that number is?

19 A That's a secondary loan number that OneWest assigned it.  
20 I believe it's the Freddie Mac loan number.

21 Q And loan file withdraw information, what is this telling  
22 you?

23 A That section tells me that the file is no longer -- it was  
24 requested from -- from the servicer, OneWest, and we shipped  
25 it out. And there is information as to who we shipped it to,

1       when we shipped it, where we shipped it, how we shipped it,  
2       et cetera, and the file had been shipped out to OneWest.

3       Q     Can you tell what date it was shipped?

4       A     October 6th, 2010.

5       Q     Now, in your experience in dealing with -- well, let me  
6       back up.

7                  Do you very often refer to these complete loan file  
8       information sheets to find information about loan files in  
9       the possession of Deutsche Bank?

10      A     We use this screen often to find out if the loan is in our  
11       possession and where it is. It's a screen that we use often.

12      Q     And in your experience, is the information that's on this  
13       screen reliable?

14      A     Yes.

15      Q     So let me ask you again specifically about the loan file  
16       withdrawal information section of this. How is the  
17       information that is in here, how does it get in here? How is  
18       it populated?

19      A     It is populated by someone here through -- a request would  
20       come in for the file, and we would populate these fields  
21       through a drop-down list, mostly, you know, or they're  
22       automatically updated when transactions occur.

23                  So the reason a file is withdrawn is a drop-down list they  
24       send to the attention of the "authorized by," those are all  
25       drop-down lists, when someone chooses -- you know, when the

1       person requested it who it was supposed to go to per the  
2       request.

3       The date fields are automatically populated when the  
4       transaction takes place, and the transmittal number is  
5       automatically assigned, and the loan number is actually typed  
6       in by a Deutsche Bank representative.

7       Q     All right. Can you tell by looking at this document when  
8       Deutsche Bank received this loan file?

9       A     Deutsche Bank received -- I can tell, yes.

10      Q     And where are you looking?

11      A     I am looking on the second page, under the  
12       second-to-the-last section, it says, "Loan file  
13       transactions."

14      Q     All right. And what does it tell you?

15      A     Under that section, the top -- basically, the first line,  
16       it says, "Initial loan review," and there's a date of  
17       1/16/2007. That tells me we received the file on or about  
18       1/16/2007.

19      Q     Let me stop you there. What happens when a loan file is  
20       received by Deutsch Bank? What happens within the bank when  
21       the bank receives an original loan file?

22      A     We would review it against data we would have received  
23       from the client. So we would receive data from a client for  
24       loan files, and then once we received the files, we would  
25       review the files against that data.

1 Q And does the data tell you what is being sent in the  
2 original file?

3 A No. It says -- it basically says -- the data points on  
4 the note to confirm that we have the right file, the right  
5 note.

6 Q Okay. How do you know that this particular file contained  
7 the original note?

8 A Can you repeat that?

9 Q Sure. How do you know -- or I'll ask you this: Do you  
10 know whether the file that we're talking about here, the  
11 McDonald file, contained the original note?

12 A From this screen, it doesn't specifically say the original  
13 note is in the file. But I can tell from -- you know, I can  
14 tell from my system if we have the original note, and I can  
15 tell if any updates were ever -- ever logged in, you know, to  
16 change the status of the note to see if -- what it is now  
17 versus what it was before.

18 And looking at this, whatever note -- whatever document  
19 came in for the note, we had the whole time. But looking at  
20 this, I can't tell if it was an original note or not unless I  
21 looked at another screen on my system.

22 Q Do you have another screen on your system that would tell  
23 you whether the original note was in the file?

24 A Yes.

25 Q And what is that?

1 A That would be the file inventory screen.

2 Q All right.

3 You talked about how -- I think you said something just  
4 now in your testimony about how you can tell if something  
5 changed about the file. Can you explain that a little bit  
6 more to the court?

7 A Yes. If you look at that same -- that same area we were  
8 just in, page 2, second-to-the-last section, loan file  
9 transactions, you will see the first transaction was the  
10 initial loan review. Look and follow the next two  
11 transactions. They were updates to the mortgage and title.  
12 That would tell me that there was some change in the status  
13 of the documents received, subsequent documents for the  
14 mortgage and title from the initial delivery. So those  
15 changed, but it looked like nothing else changed, other than  
16 those two updates.

17 Q All right. So if I'm understanding you correctly, you got  
18 the original file shortly after that -- well, on the 27th of  
19 March you got something from the mortgage company, and then  
20 on April 9th you got something from the title company?

21 A Well, not a document updating the mortgage. We received a  
22 document updating the title.

23 Q Okay. So in this case, Mr. Corcoran, do you know whether  
24 Deutsche Bank sent to OneWest the original note -- well,  
25 whether OneWest was sent the -- excuse me -- Deutsche Bank

1           sent the original note to OneWest?

2       A    Deutsche Bank sent the entire file to OneWest.  Looking at  
3       the specific document, this doesn't say the original note was  
4       in that document -- was in that file.  Again, I'd have to  
5       look at my inventory screen to see if the original note was  
6       here at Deutsche Bank and in the file that we sent out.

7       Q    Is that something that you can do as you're sitting here  
8       testifying right now?

9       A    Yes, I can do that.

10      Q    Can you do that, please?

11      A    Yes.

12      Q    And tell the court whether the original note was in the  
13       file that Deutsche Bank had in its custody?

14      A    Yes.  Deutsche Bank's system shows the original note was  
15       in the file when it was shipped to OneWest on 10/6/2010.

16      Q    Does that same inventory page that you're looking at or  
17       the screenshot that you're looking at show whether the  
18       original note came with the file when the file was first  
19       received by Deutsche Bank?

20      A    Looking at this screen and in conjunction with the  
21       exhibits, I can tell that the original note came in when the  
22       file was first delivered, and it's never changed.  So we've  
23       had the original note the whole time, until the 10/6/2010  
24       date.

25      Q    All right.  Tell the court how you keep these original

1 files, physically. Literally, how does Deutsche Bank keep  
2 these original files?

3 A They are kept in a two-hour fire-rated facility. Meaning  
4 if there is a fire on the outside of the room, it's going to  
5 take two hours to get through the special wall, if you will.  
6 And they're kept in mostly numerical order by client. So the  
7 client here would be OneWest/Freddie Mac, so those loans are  
8 kept in a group segregated in loan number order, and they're  
9 kept on shelving. And, again, it's a huge room with the  
10 shelving, and the files are by loan number order on these  
11 metal shelves.

12 Q All right. Let me ask you, just so I have covered all of  
13 what I think I need to in terms of my basis.

14 How do you know that this particular custodial  
15 agreement governs this McDonald loan?

16 A How do I know -- I'm sorry. Can you repeat that?

17 Q Sure. How do you know that the custodial agreement that's  
18 Exhibit A to your declaration covers the McDonald loan, which  
19 is reflected in Exhibit B to your declaration?

20 A So transactions are given transaction codes here at  
21 Deutsche Bank. If you look at page 1 of Exhibit B, at the  
22 very top it says, "Complete loan file information," and the  
23 first line is the loan number. The next item over to the  
24 right says, "Issue," and that issue is IN010C. That's a code  
25 that we've given to Freddie Mac -- the Freddie Mac

transaction with OneWest/IndyMac, so I know that that loan is part of that agreement.

THE COURT: Are you just about done, counsel?

4 MS. VACURA: I am done, Your Honor. Thank you very  
5 much, Mr. Corcoran.

6 THE COURT: Mr. Corcoran, you're now going to get  
7 questions from Ms. Dao.

## CROSS-EXAMINATION

9 | BY MS. DAO:

10 Q Mr. Corcoran, I'd like to ask you a few questions based on  
11 that exhibit.

12           When you submitted this declaration, why did you not  
13 attach the information that you're now referring to as being  
14 checked by you to verify that the original note was, in fact,  
15 in the loan file?

16 A That was not requested.

17 Q And do you know -- and let me ask you again: Is this  
18 Exhibit B the Form 1034, as it's known, or not?

19 | A    Exhibit B is not Form 1034.

20 Q And do you have that in your records, as far as that  
21 document, Form 1034?

## 22 A The specific 1034 for this loan?

23 Q Yes.

24 A I don't know. I wasn't asked to research this, but I  
25 don't know.

1 Q Okay. If you could refer to Exhibit B on the top of the  
2 page under the heading of "Complete loan file information,"  
3 what -- under "Issue," do you see that, the very first  
4 portion?

5 A Yes.

6 Q What does that code represent?

7 A That code represents -- it says, "IN010C," and that  
8 represents the relationship we have -- we assign all our  
9 transactions a code, and that code represents the  
10 relationship we have with Freddie Mac, slash,  
11 OneWest/IndyMac.

12 Q Okay. Is it true that you received the loan -- according  
13 to your testimony, you received the loan file and created  
14 this or started this complete loan file information back in  
15 2007?

16 A Correct.

17 Q Okay. And then the agreement that you referred to, as far  
18 as the relationship with OneWest, was only entered into as of  
19 May 2009?

20 A Correct.

21 Q Okay. So this particular code that you testified to, when  
22 was it assigned? Upon the agreement being created?

23 A It was signed upon -- yes, a relationship started.

24 Q Okay. And prior to that, what agreement, if any, and who  
25 were the parties?

1 A I'm not sure I follow your question.

2 Q Okay. Before the agreement between -- this is a three-way  
3 agreement between Freddie, OneWest, and Deutsch, correct?

4 A Uh-huh.

5 Q And that agreement only came into being as of May 12,  
6 2009.

7 A Okay.

8 Q Prior to that, are you aware of any agreement governing  
9 your relationship or your contract as custodian?

10 A Yes. There is a previous agreement with Deutsche Bank,  
11 Freddie Mac, and IndyMac.

12 Q Okay. And you testified that Deutsche Bank keeps records  
13 for various entities, and they're mostly mortgage-backed  
14 security pools?

15 A Well, we have different relationships -- different  
16 transactions, different relationships. That's one type of  
17 transactional relationship.

18 Q Do you know whether the McDonald loan was part of a  
19 securitized trust?

20 A I don't know. I know that we're holding it for Freddie  
21 Mac.

22 Q What about this next section over, "subpool," and then  
23 there's another code. Do you see that?

24 A Yes, I do.

25 Q What does that mean?

1 A That's -- Deutsche Bank assigns a code, if you will, and  
2 it generally involves a date. I couldn't say for 100 percent  
3 sure, but it's some sort of date, probably February 27th,  
4 2007, and it's just a way -- it's an internal code, a thing  
5 we use for reporting purposes.

6 Q Okay. In this case my client was told that there was a  
7 CUSIP number assigned to this loan. Does that help at all in  
8 identifying whether or not the loan was actually securitized?

9 A I wouldn't have a CUSIP number.

10 Q Do you even know what that is?

11 A I've heard the term, yes.

12 Q But that has no relevance or significance to you?

13 A No, not to me, no.

14 Q You were checking some -- some parts of your system to  
15 assure the court that the original note made it into Deutsche  
16 Bank's custody on the date that it shows on this Exhibit B,  
17 correct?

18 A Could you repeat that?

19 Q The information that you were checking for us just moments  
20 ago to ascertain that the original note did come in, these  
21 are screenshots you're talking about.

22 A Yes.

23 Q Okay. And, again, are they coded so that you would be the  
24 person that would decide for us?

25 A Let me look at it. There are codes there, yes.

1 Q Okay. On the second page of Exhibit B, you mentioned that  
2 there were changes under the loan file transactions?

3 A Uh-huh.

4 Q And relating to the mortgage or the deed of trust on  
5 3/27/2007, March 27, 2007?

6 A Yes, I see that.

7 Q What changes are you referring to?

8 A The changes, meaning we received an original recorded  
9 mortgage on or about that day, so our system was updated from  
10 having just a copy of the mortgage to the original reported  
11 mortgage.

12 Q I'm sorry. Is the note the original mortgage that came  
13 in, or a copy of the original mortgage?

14 A It denotes the original mortgage that came in.

15 Q So does the notation that trails "documents" mean that it  
16 came after the file was shipped to you?

17 A That's correct.

18 Q And then, again, the next transaction with the reference  
19 of title trailing docs, what is the change there for April 9,  
20 2007?

21 A It was a change from -- we originally received a  
22 preliminary title report, and then on April -- you know, on  
23 or about April 9, 2007, we received a final original title  
24 policy.

25 Q So the original file that was shipped to you did not have

1       an original deed of trust and mortgage and did not have the  
2       original policy?

3       A     Correct.

4       Q     And there's nowhere on Exhibit B that we can see any  
5       information relating to the original note?

6       A     No.    Correct.

7       Q     Under the agreement that you referred to, Exhibit A, who  
8       was your client?

9       A     In this case, we had both Freddie Mac and OneWest.

10      Q     Can OneWest be replaced, according to the terms of the  
11       custodian agreement?

12      A     I haven't looked at it that closely, but I know -- I don't  
13       know if it's under this agreement, but I know they can be  
14       replaced.

15      Q     In this case we've learned that -- let me ask you this  
16       question: When you shipped the original loan file, did you  
17       ship the entire file?

18      A     Yes, correct, the entire file was shipped.

19      Q     So after you -- before you shipped the original loan file,  
20       did you retain a copy of the contents?

21      A     Not that I'm aware of.

22      Q     Do you retain an electronic image of the original note or  
23       any of the documents in the original file?

24      A     There are cases where, upon request, we would do that.

25      Q     What about this case, Mr. Corcoran?

1 A This case, I do not know specifically.

2 Q Okay. So you don't happen to have a copy of the original  
3 note that was shipped out to OneWest?

4 A I do not have one in front of me or handy, no.

5 Q Okay. And you don't know whether you've retained an  
6 electronic copy, either?

7 A I do not know, correct.

8 Q Under the terms of the agreement, does the beneficial  
9 interest of the notes remain with Freddie Mac?

10 A I do not know.

11 Q Do you have -- you referred to a request made by OneWest  
12 for the shipment of the loan file. Do you have a copy of  
13 that request handy?

14 A I do not, no.

15 Q Do you know if one existed?

16 A I do not -- I do not know.

17 Q Mr. Corcoran, if I could refer you to Exhibit A, page 5,  
18 and it will be Section G. Do you see that, sir?

19 A I see that, yes.

20 Q So does that paragraph require you to have a request in  
21 the form of a 1036 in order to release the note in this case?

22 A Yes, it says I need a Form 1036.

23 Q And you don't have that?

24 A I don't have it in front of me. I don't have it handy. I  
25 don't know where it is.

1 Q Okay.

2 MS. DAO: I don't have anything further. Thank you.

3 THE COURT: Thanks, counsel. Anything else, counsel?

4 MS. VACURA: Just, Your Honor, if -- not from this  
5 witness.

6 THE COURT: Okay. Thank you, Mr. Corcoran, for  
7 making yourself available. We are saying good-bye now.

8 THE WITNESS: Thank you.

9 MS. VACURA: If it would be helpful for the court, I  
10 learned about this other screenshot the day before yesterday.  
11 If it would be helpful for the court, I'd be happy to provide  
12 a copy.

13 THE COURT: Well, provide a copy to counsel.

14 MS. VACURA: I don't have a copy, but will provide  
15 one.

16 THE COURT: And you can send me one, also. Just copy  
17 me on what you send her.

18 Let's put Mr. Boyle back on the witness stand. You're  
19 still under oath, sir. Ms. Dao, you have a few more  
20 questions for Mr. Boyle?

21 CHARLES BOYLE, HAVING BEEN PREVIOUSLY SWORN,  
22 TESTIFIED AS FOLLOWS:

23 CROSS-EXAMINATION continued

24 BY MS. DAO:

25 Q Mr. Boyle, I'm going to ask you to refer to Defense

1                   Exhibit A-7, which is in the smaller notebook, I believe, the  
2                   smallest one.

3                   THE COURT: "Corporate resolution," do you see it?

4                   THE WITNESS: Yes, I do.

5                   Q     (By Ms. Dao) Earlier you testified that you believed  
6                   there was a corporate resolution applicable to the date that  
7                   Mr. Burnett signed the assignment of deed of trust, correct?

8                   A     Correct.

9                   Q     And you had also furnished that resolution to your  
10                  counsel?

11                  A     I believe they have a copy.

12                  Q     And is A-7 the particular corporate resolution you  
13                  referred to earlier?

14                  A     No. This isn't the one that has Brad Burnett's name on  
15                  it.

16                  Q     So is there another one that we are missing?

17                  A     Yes. There's several corporate resolutions that the  
18                  company maintains. For whatever reason, I don't see the one  
19                  that we have with the effective date with Brian Burnett's  
20                  name on it.

21                  Q     When did you give Exhibit A-7 to your counsel?

22                  A     I don't know.

23                   MS. VACURA: Objection, Your Honor.

24                   THE COURT: He answered, "I don't know." We'll leave  
25                  it at that.

1 Q (By Ms. Dao) We have discovered today that there are two  
2 versions of the original note. Are you now aware of that?

3 THE COURT: Well, you can leave the preamble out.  
4 You're talking about the last page in the moving --

5 MS. DAO: Yes.

6 THE COURT: Okay. Do you have any explanation for  
7 that?

8 THE WITNESS: I know that in certain cases at  
9 origination there's a copy of the note that's made. You  
10 know, there's several copies of the original note that are  
11 made, and sometimes, you know, it can be endorsed.

12 What I know is that the original note that Deutsch was  
13 holding was the one that we produced as the correct and true  
14 copy.

15 THE COURT: With the center right signature?

16 THE WITNESS: Yes, correct.

17 Q (By Ms. Dao) So you really can't account for -- well, let  
18 me ask you this question: Can the court be assured that  
19 whenever there's a document that has been represented either  
20 by you or by your counsel that it is a true and exact copy,  
21 the court can rely upon that representation?

22 A Yes.

23 MS. DAO: Nothing further, Your Honor.

24 THE COURT: Anything else further for this witness?

25 MS. VACURA: No.

1                   THE COURT: Okay. If you want to leave now, it's  
2 okay with me, but check with them.

3                   THE WITNESS: Okay. Thank you.

4                   THE COURT: Okay. So do you want to make any  
5 additional representations as officers of the court, either  
6 you or Ms. Morrison, or anything like that?

7                   MS. VACURA: Yes, Your Honor. We would like to  
8 address -- just so we have a clear record.

9                   We referenced in our pre-evidentiary hearing documents,  
10 the pleadings that we filed with the court, that there seems  
11 to be some confusion about what Mr. Boyle verified in the  
12 last round of discovery. We have for the court as exhibits  
13 for the court to review the two separate pleadings that were  
14 sent to Mr. McDonald when he was pro se from Ms. Buck  
15 Morrison's office. One is verified by her, and then the next  
16 day a pleading is sent that's verified by Mr. Boyle, and it  
17 is different in its answer to Interrogatory No. 7 -- Request  
18 For Production No. 7, which you had indicated was a concern  
19 to you in terms of how the defendants responded to those  
20 inquiries.

21                  And so I do want to -- we can talk about them at this very  
22 moment, or you can take note in chambers later when you're  
23 reviewing exhibits, but I want to note that what Mr. Boyle  
24 verified -- what was changed and what Mr. Boyle verified was  
25 a response to only objections. Mr. Boyle did not say, "We

1       don't have anything responsive to this," which is what was  
2       verified by Ms. Buck Morrison the day before. I think that's  
3       important in the context of a couple of things that are going  
4       on here today.

5       One is that we've sought this protective order so that we  
6       can provide additional documents. Those additional  
7       documents, Your Honor, are only being offered in order to  
8       assure this court that OneWest has given the plaintiff  
9       everything it possibly can that might have been asked for  
10      that might be responsive. So in other words, these documents  
11      may not even be directly responsive, but because the court  
12      indicated it had concerns about the responses that were made  
13      during that time, we decided that we wanted to bring these to  
14      the court's attention and to Mr. McDonald's attention but  
15      pursuant to a protective order.

16      Now, the time at which Mr. Boyle verified his pleading and  
17      said that we object, it is because Ms. Buck Morrison and my  
18      firm and the parties believed that that was, in good faith,  
19      the appropriate response, because what was being asked for  
20      was not relevant to the issues that are in this case. And so  
21      at the time that that objection was interposed and Mr. Boyle  
22      verified it, because we, to this day, maintained that those  
23      things they were being asked for are not relevant to the  
24      case. We're not relying on them, we're not asking to submit  
25      them pursuant to a protective order so we can use them. We

1       are simply doing it to assure the court that what may be out  
2       there is being given to Mr. McDonald.

3       In the context of when all of this occurred, Mr. McDonald  
4       asked for these documents. The objections were interposed.  
5       Mr. McDonald did not come back and say, "Let's talk about  
6       this. I want these." He did ask this court for an extension  
7       of the discovery deadline, I imagine, perhaps, maybe to  
8       pursue some of these things. The court said no, that a  
9       sufficient amount of time has passed and discovery should be  
10      concluded. And so for us, for OneWest Bank and the other  
11      defendants and for Mr. Boyle, that was the end of the matter.  
12      It was not until we received the order for an evidentiary  
13      hearing that we decided in order to make a full -- you know,  
14      a good-faith showing, that we're making our very best efforts  
15      that these documents have now been offered.

16      And, again, it's my understanding from reading the  
17      response to our motion for a protective order, Mr. McDonald  
18      doesn't want them, and if Mr. McDonald doesn't want them,  
19      then we don't need a protective order, and we won't offer  
20      them.

21           THE COURT: Well, I take it counsel didn't say she  
22      didn't want them. She said it's too late and there's nothing  
23      we can do with them now. We would have liked them back then,  
24      but not now.

25      Now, what do you need a protective order for? What is the

1 basis for that?

2 MS. VACURA: The documents that are being offered are  
3 ones that come from proprietary platforms. They contain  
4 information that may or may not be something that an outside  
5 party could look at and make use of in a competitive manner.  
6 They have loan information on them. They are also -- one of  
7 them shows payments to Freddie Mac, and sort of how that --  
8 how that relationship works and the software that's used, and  
9 so they're basically business proprietary records that  
10 OneWest would prefer to have a protective order for. It's  
11 basically for the same reasons companies ask for any  
12 protective order when it's proprietary software and platform.

13 MS. DAO: Could I respond briefly, Your Honor?

14 THE COURT: Yes.

15 MS. DAO: I am mindful of the fact that counsel just  
16 stepped into the case within the last couple of months and  
17 may not have the complete history.

18 But I recall Docket 136, which is your order, and the  
19 order came about after Mr. McDonald, as a pro se litigant,  
20 had moved to compel, not once but twice. And I think this is  
21 a good demonstration with regards to how the plaintiff is  
22 held hostage by the defendants' decision unilaterally to  
23 decide what is important and what is relevant.

24 And as I was waking up this morning at 6:00 in the  
25 morning, I found more documents that were filed with this

1 court as far as for purposes of this hearing. And I think  
2 that the rules of law should apply, Your Honor. We should be  
3 able to vet the authenticity of these documents and decide at  
4 the time that we ask for them. Now we're rendered helpless.  
5 There's nothing for us to do, and I think it's a little  
6 outrageous, you know, for the defendants to make that  
7 decision by themselves after the court has ordered. And to  
8 me it looked like they didn't come forth until you ordered.

9 THE COURT: You indicated you wanted to put  
10 Mr. McDonald on the witness stand. This evidentiary hearing  
11 was limited for certain purposes, but if you want to make an  
12 offer of proof to me as an officer of the court about what  
13 Mr. McDonald would have testified to so I understand, go  
14 right ahead.

15 MS. DAO: Sure. Yeah, I would, Your Honor. I would  
16 ask that the document that was submitted or filed with the  
17 bankruptcy court in Mr. McDonald's Chapter 7 case be admitted  
18 because it does have another affidavit from an employee from  
19 OneWest attesting to the authenticity of the note they  
20 attached, so I'm going to ask that the court either take  
21 judicial notice or accept it as our offer of proof.

22 THE COURT: This is, again, going to that page, the  
23 last page?

24 MS. DAO: That's correct, Your Honor.

25 THE COURT: Your point on that, Ms. Dao, is what?

1 That there are two documents and we don't know which is the  
2 original?

3 MS. DAO: That's correct.

4 THE COURT: Okay.

5 MS. DAO: And not just that they exist, but that they  
6 have been submitted to different courts for purposes of the  
7 defendants' reliance on their theory of the case. And it is  
8 the crux of our case as well with regards to the path that  
9 the note has traveled and what might have happened to it.  
10 And so I think the court would be well advised to have the  
11 additional -- you know, obviously these are -- and I would  
12 also point out that the timing of the production of the notes  
13 are important, because the court's question is, at the time  
14 that the notice of default was issued, did the defendant  
15 have -- the holder/owner have any kind of legal authority to  
16 do what they did? So I would ask the court to accept this as  
17 our offer. And then the other document was the letter that  
18 Mr. McDonald received.

19 THE COURT: Sure. That's Plaintiff's 1, and what  
20 you're handing to Kerry now is Plaintiff's 2?

21 MS. DAO: That's correct, Your Honor.

22 THE COURT: Okay. So do you have -- Mr. Vacura, do  
23 you have any objection to 1 or 2 for purposes of this  
24 evidentiary hearing?

25 MS. VACURA: We do not, Your Honor.

THE COURT: Okay. We'll admit those exhibits.

2 (Exhibit 1 and 2 admitted.)

3 MS. DAO: That's all I have, Your Honor.

4 THE COURT: Okay. Thanks very much.

5 The court has -- can I take a look at the original?

6 MS. VACURA: Of course.

7 THE COURT: And earlier in the briefing, there was an  
8 allegation from Mr. McDonald that, "I don't think this is the  
9 original because it doesn't have wear and tear and it doesn't  
10 have this or that." Is that still his position about this  
11 document, too? Have you seen the actual original?

12 | THE PLAINTIFF: Yes, Your Honor --

13 THE COURT: Well, I was just asking Ms. Dao.

14 MS. DAO: Your Honor, that is still his contention,  
15 and I believe that's the same original that he was given an  
16 opportunity to inspect prior.

17                   THE COURT: Even though there's, like, blue ink on  
18 there and everything?

19 MS. DAO: That's correct, Your Honor. That's our  
20 contention.

21 THE COURT: Okay. Well, this was helpful for me, to  
22 answer some of my questions. Unfortunately, I don't have a  
23 lot of time right now to go any further, but I will return to  
24 where I was when I ordered the evidentiary hearing, and then  
25 we'll issue some rulings in that regard. And also sort of a

1 roadmap of where we go from here. And if there are more  
2 dates we need to schedule, I will talk to counsel on a  
3 conference call to try to deal with that going forward.

4 I just want to remind Mr. McDonald, you know, before  
5 Ms. Dao was here, that we're dealing with issues here, here,  
6 and here, but ultimately that loan has to be paid off to  
7 somebody. It's not like it's going to disappear into the  
8 ether.

9 The question is, are they allowed to go forward with their  
10 nonjudicial foreclosure through the Deed of Trust Act now, or  
11 do they need to start it over with new material or anything  
12 like that? But it isn't like, you know, somebody is going to  
13 wave a magic wand.

14 MS. DAO: We've never expected that, Your Honor. We  
15 know better.

16 THE COURT: Great. So I will be back in touch with  
17 you. Thanks very much, counsel, on the defense side for  
18 getting the witnesses available to us, and, Ms. Dao, for your  
19 cooperation and keeping us within our timeframe.

20 MS. VACURA: Your Honor, may I ask for clarification  
21 on one issue, and that is, it is the court's directive that  
22 we either provide -- explain our responses to plaintiff's  
23 inquiries, or bring documents, and I guess I'm not clear.

24 We had brought some documents that I just talked to the  
25 court about. There is no protective order in place, so

1 I'm --

2 THE COURT: I'm not inclined to issue the protective  
3 order, but I am inclined to require you to turn them over.

4 MS. VACURA: All right.

5 THE COURT: And that will be in the order. You can  
6 wait until you get it, and take a look at it.

7 I think it would also make sense for you -- and I totally  
8 understand how this happened. Mr. Corcoran made reference to  
9 another file inventory screen and a screenshot. Let's get  
10 that over to them.

11 I understand that sometimes you talk to your witnesses and  
12 you find out things you didn't know. "I thought it was all  
13 on this piece of paper." "No, it's not. There's actually  
14 another screenshot," et cetera, et cetera. I'm kind of  
15 interested in is there a Form 1034, is there a Form 1036?  
16 Maybe people can look around for those, too, and if you have  
17 them, you know, turn them over. Whether it's too late or not  
18 is a separate issue, but your taking them doesn't waive any  
19 objections you have --

20 MS. VACURA: I understand.

21 THE COURT: -- and whether it was timely and whether  
22 the court should sanction the defendants for not producing  
23 them sooner. But let's get them all over there so we're not  
24 in a situation at trial, if there is a trial, or for any  
25 other reason, where people say, "Oh, we just found this

1       document that we said we didn't know where it was," and we  
2       will take it from there. All right?

3       We'll be adjourned. Thanks.

4       I've admitted all the exhibits for purposes of the  
5       evidentiary hearing.

6       (Exhibits A-1 through A-16 admitted.)

7       (A-10 and A-11 were withdrawn.)

8

9       (PROCEEDINGS CONCLUDED.)

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C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 21st day of February 2013.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR  
Official Court Reporter